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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554 DOCKET FILE COPY ORIGINAL

In the Matter of:)
)
Implementation of Section 17 of)
the Cable Television Consumer)
Protection and Competition Act of 1992) ET Docket No. 93-7
)
Compatibility Between Cable Systems)
and Consumer Electronics Equipment)
)

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JUN 15 1994

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PETITION FOR RECONSIDERATION

Time Warner Entertainment Company, L.P. ("Time Warner"), by its attorneys, hereby respectfully request the Commission to reconsider certain aspects of its First Report and Order adopted in the above-captioned proceeding.¹ Time Warner is majority owned by Time Warner Inc., a publicly traded company and consists principally of three divisions: 1) Time Warner Cable, which operates cable systems; 2) Home Box Office, which wholly owns two premium television services (the HBO service and Cinemax) is 50% owner of one non-premium service (Comedy Central); and 3) Warner Bros., which produces and distributes motion pictures and television programs. Time Warner previously submitted comments and reply comments in response to both the original Notice of Inquiry and the more recent Notice of Proposed Rulemaking in ET Docket No. 93-7. Accordingly, Time Warner has actively participated in these proceedings from their inception.

While Time Warner generally supports the Commission's efforts in implementing Section 624A of the 1992 Cable Act, Time Warner is concerned that Section 76.630(c) of the

¹First Report and Order in ET Docket 93-7, FCC 94-80 _____ FCC Rcd _____ (released May 4, 1994).

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Commission's rules, adopted in its First Report and Order, will frustrate, rather than advance, the statutory policies underlying the 1992 Cable Act.² That section of the FCC's rules prohibits cable operators from altering the infrared codes used to operate the remote control capability of customer premises equipment and states:

Cable operators may not alter the infrared codes used to operate the remote control capabilities of the customer premises equipment they employ in providing services to subscribers. Cable operators may, however, use new equipment that includes additional infrared codes for new remote control functions that were not included in existing models of customer premises equipment.³

To the extent that this rule were interpreted only to prohibit cable operators from continually changing the infrared codes in the particular installed set-top converters which they utilize, compliance with the provision would probably not present insurmountable problems. However, in the First Report and Order, the Commission indicated that this requirement will not only prohibit cable operators from changing the infrared codes in the equipment which is presently employed, but would also "necessitate that the remote control capabilities of any replacement customer equipment provided to subscribers employ the same infrared codes for remote control that are used with the subscribers existing set-top equipment."⁴ Time Warner believes that the Commission's decision to prohibit operators from utilizing equipment operating on different infrared codes from the equipment that is currently deployed is not in the consumer's best interest and would significantly impede, if not effectively prohibit, the ability of cable operators to provide their customers with state-of-the-art, cost effective products and features.

²Although Time Warner's Petition For Reconsideration is limited to the single issue discussed herein, it wishes also to go on record in support of the Petition For Reconsideration filed in this proceeding by the National Cable Television Association.

³47 C.F.R. § 76.630(c).

⁴First Report and Order at ¶ 63. See also, *id.* at ¶ 72.

Section 624A(c)(1)(A) requires the Commission, in establishing compatibility regulations, to consider both "the cost and benefits" to customers of imposing compatibility requirements. Time Warner believes that the Commission's prohibition against changing infrared codes, even with respect to newly purchased equipment, is ill conceived and both overstates the potential benefits that will be accrue to consumers and grossly underestimates the burdens that such a requirement would impose.

Paragraph 63 of the First Report and Order states that the purpose of the prohibition is to "avoid the need for subscribers to replace remote control units they own if the cable operator changes their set-top box." The Commission indicated that it did "not believe this will be a significant burden for cable operators, as they can simply choose replacement equipment that operates with the same infrared codes as their existing equipment." The absence of a significant burden for cable operators was based on the Commission's belief that "in quantity orders, cable operators will be able to specify the specific codes to be used in new equipment."⁵ The Commission's reasoning, while theoretically attractive, is not borne out by reality.

First, the Commission overstates any benefits that would be realized by subscribers from the prohibition on changing infrared codes. In the majority of instances, remote control units purchased by subscribers to operate with their cable service will continue to work even where existing customer premises equipment is replaced with equipment which operates on different infrared codes. In cases where the remote control purchased by the subscriber is programmable, the new codes can be programmed into the existing unit thereby allowing a subscriber's remote control to be used with the new equipment. In cases where the subscriber purchases a remote

⁵First Report and Order at fn. 40.

control device which is pre-programmed at the factory, such units are typically pre-programmed to operate with most existing customer premises equipment.

Furthermore, the Commission has underestimated the burden imposed on cable operators and their practical ability to deal with the prohibition on changing infrared codes. The prohibition effectively forbids cable operators from utilizing customer premises equipment in the consumer's home which was manufactured by a company other than the incumbent manufacturer since the IR codes are normally the intellectual property of the set-top manufacturer. The First Report and Order fails to recognize that there are not current provisions under existing law requiring these manufacturers to license their technology to other manufacturers.

Even where licensing is available, the data codes used in older models of set-top converter/descramblers are not, in many cases, compatible with the data codes used in more recent models due to differences in bit rates, format and other differences in the way that data associated with the different infrared codes is structured. While the Commission's rules allows cable operators to add new features and new codes to support those features, this may not be possible without changing the structure of the underlying datasets that support the remote control functions in their entirety. Licensing of IR codes and associated dataset structures does not alleviate this problem. Even replacing old equipment with newer models of the same brand can be difficult since the old equipment was manufactured at a time when feature rich control sets were not seen as necessary and the associated data structure used was not envisioned as needing to support an expanded feature set. In such cases, the prohibition on changing IR codes will serve only to lock cable systems into outmoded technology and prevent subscribers from being able to access and utilize many new services which depend on on-screen displays, such as multichannel impulse pay-per-view, near video on demand and home transaction services.

As a practical matter, cable operators will have an extremely difficult time in purchasing products from competing manufacturers and effectively will be locked into products manufactured by the supplier whose equipment is currently in use in a particular cable system or which may not be able to support newly developing services. The inability on the part of the cable operator to change set-top products from those selected years ago, even where the manufacturer may no longer be in business or where the product's IR structure will not support newly emerging services, is certainly not in the customer's best interests and runs counter to the express purposes of the 1992 Cable Act to encourage the widest possible diversity of services and continued development of cable technology.

The prohibition on changing IR codes would also impose significant costs on cable systems which ultimately must be borne by the consumers. For example, Time Warner is involved in several situations where its cable systems are currently in the process of being rebuilt. In these systems, often several different types of converters/descramblers, using different infrared codes, are simultaneously in use in different parts of the system. Under the rule as written, Time Warner would be prohibited from replacing the old converter/descrambler used in one portion of the system with set-tops currently being used in the newly rebuilt portion of the system despite the fact that the replacement set-tops IR codes may be better supported than the original models in terms of compatibility with commercially available remote controls in the marketplace. The need to maintain these older set-top converters past their normal life also burdens the cable operator with added operating expenses.

Likewise, it is also very common for cable systems to utilize several different models and brands of customer premises equipment even within a single cable system, depending upon the level of service taken, the features required to support that level of service and other factors. It would be extremely burdensome to require cable operators to make available and stock several

versions of each different set-top utilized on the system (assuming that versions with differing IR codes could be obtained) simply because a subscriber utilizing one brand or model of equipment desired to upgrade or downgrade his or her service or equipment. Indeed, in some cases, a subscriber could be precluded from upgrading to a service level which required an expanded IR data set support structure merely because the data set structure in the subscriber's old equipment is not capable of supporting even the most basic functions in the replacement equipment.

Equipment may also need to be replaced and replaced quickly in a system where security has been compromised. The problem of signal privacy and the need to maintain signal security has been expressly acknowledged in the First Report and Order in this proceeding. In cases where the security method employed in a particular cable system has been breached significantly, the cable operator may be required to replace the security system employed with hardware and software manufactured by a different source. The operator's ability to recover security quickly cannot and should not be impeded by the non-existence of licensing arrangements or the incompatibility of IR datasets.

The point of the foregoing is that the increased costs of set-top hardware resulting from marketplace procurement without effective competition, or which imposes onerous licensing provisions between set-top manufacturers, may well exceed the small savings realized by the few consumers who might be spared from having to purchase a new remote control device. Time Warner submits that if the intent of the Commission's rules was designed to "protect" the consumer investment in remote control devices, regardless of value, age or features provided, then the prohibition in changing IR codes should apply equally to the manufacturers of consumer electronics equipment such as televisions, VCRs, stereo receivers, CD players and the like. Consumers replacing older model televisions with newer ones, even though purchasing the same

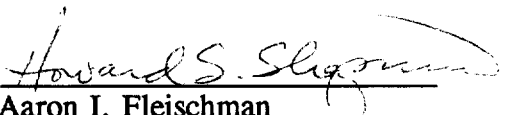
brands, may find that they are required to purchase a new remote control device to work with the new TV. There is absolutely no reason to discriminate against the providers of cable service by prohibiting them from changing IR codes on their products when the producers of consumer electronics products are free to do so, especially in cases where the prohibition on changing IR codes would delay the upgrading of system capability, the introduction of new services and features or substantially increase the costs of such new services.

CONCLUSION

Wherefore, based on the foregoing, Time Warner request that the Commission revise Section 76.630(c) of its rules to allow cable operators to replace existing customer premises equipment with equipment which uses different IR codes. This can be accomplished by prohibiting cable operators from changing IR codes in installed customer premises equipment, except in cases where the new codes are added to allow the introduction of new services and features, where the equipment containing the new codes is being substituted for existing equipment as part of a general system upgrade or rebuild, or to recover signal security in a system where security has been compromised.

Respectfully submitted,

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Dated: June 15, 1994
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